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# WISCONSIN LEGISLATIVE COUNCIL

## RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-034

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **2. Form, Style and Placement in Administrative Code**

a. In s. DFI-CU 72.01 (1) (a), the semicolon should be deleted and replaced with a period.

In s. DFI-CU 72.01 (1) (b), the semicolon and the word “and” should be deleted and replaced with a period. The same change should be made in s. DFI-CU 72.04 (2) (a).

b. Examples should be set forth below the text to which they apply. For example, see s. DFI-CU 72.03 (1) (a) to (c).

c. In several provisions, “may not” should replace “shall not” to express a prohibition. [See s. 1.01 (2), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. DFI-CU 72.01 (3), the reference to s. DFI-CU 72.02 should be more specific. It could be changed to s. DFI-CU 72.02 (1).

b. In s. DFI-CU 72.07 (1) (b) 2. and 4., reference is made to “par. (b).” The references are unclear since they are set forth in par. (b).

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. DFI-CU 72.01 (2), it would be clearer if “. . . if he or she has . . .” were replaced with “. . . by means of . . .” Further, the definition does not contain a requirement that anyone be a member of the credit union. Surely, an “associated member” must at least be associated with **a member** or be **a member**, himself or herself. Further, the use of the term throughout the rule is confusing.

b. In s. DFI-CU 72.01 (3), either the term that is defined should be changed from “business purpose” to “business purpose loan,” or the definition should be changed to delete “. . . a loan where the borrower intends to use the proceeds for . . .” However, if the defined term is changed to “business purpose loan” how will a “business purpose loan” be different from a “member business loan”?

c. In s. DFI-CU 72.01 (6), the computation of a loan-to-value (LTV) ratio excludes loans that are not member business loans even if such a nonmember business loan is secured by the item of collateral for which the LTV ratio is being computed. Is that the intent?

d. In s. DFI-CU 72.02 (2) (c), the second sentence is unclear. If a member has a number of loans, and an additional loan causes the total amount loaned to that member to exceed \$50,000, is only the additional loan considered a business loan, or are all the loans considered business loans? Further, “any” should be changed to “an” in the first sentence.

e. In s. DFI-CU 72.02 (2) (e), what is a “corporate credit union”?

f. In s. DFI-CU 72.03 (1) (a) to (c), is the prohibition on loans meant to extend to all chief executive officers, assistant chief executive officers and chief financial officers, or just to the ones that work for the credit union making the loan?

g. In s. DFI-CU 72.03 (1) (d), the wording is awkward. Is the paragraph meant to refer to **any** associated member, or to any associated member who shares a pecuniary interest in a business endeavor with one of the individuals listed in the subsection?

h. In s. DFI-CU 72.03 (2), what is the definition of “additional income”?

i. In s. DFI-CU 72.03 (3), “decision making” should be hyphenated.

j. In s. DFI-CU 72.04 (1), “. . . 15% of net worth . . .” should be changed to “. . . 15% of the credit union’s net worth . . .”

k. In s. DFI-CU 72.04 (1) (c), “. . . the federal government, state, or any . . .” should be changed to “. . . the federal government, the state, or any . . .”

l. In s. DFI-CU 72.04 (4), “. . . construction and development . . .” should be changed to “. . . construction or development . . .”

m. In s. DFI-CU 72.05 (2), what does “utilize the services of” mean? This phrase appears in a number of places in the rule.

n. In s. DFI-CU 72.06 (4), “. . . loans.” should be changed to “. . . loan.”

o. In s. DFI-CU 72.06 (8), “Receipt and periodic . . .” should be changed to “A requirement for receipt and periodic . . .” Further, the subsection needs to specify who is receiving and who is updating, and whose tax returns and financial statements it is referring to.

p. In s. DFI-CU 72.06 (9), does the credit union’s member business loan policy have to contain all this documentation, or does the policy have to contain a requirement for all this documentation.

q. In s. DFI-CU 72.07 (1) (b) (intro.), the loan and the credit union meet “all of the following:” should be changed to “all of the following apply.”

r. In s. DFI-CU 72.07 (1) (b) 3., the credit union must have a net worth of at least 7% of what?

s. In several provisions, “an” should precede “LTV” since the pronunciation of the acronym begins with a vowel (“L” is pronounced “el”).

t. In s. DFI-CU 72.07 (2) (a) through (c), the use of both “or” and “and” at the end of the paragraphs makes it unclear which paragraph or paragraphs apply.

u. In s. DFI-CU 72.07, do subs. (4) and (5) make sub. (3) unnecessary?

v. In s. DFI-CU 72.09, “to calculate the aggregate 15% limitation . . .” is ambiguous. It seems that the calculation that the section delineates yields not a 15% limitation, but rather the percentage of the credit union’s net worth that the member’s loans represents. Furthermore, the title and text of the section should be clear about what sections it applies to. Both s. DFI-CU 72.04 and s. DFI-CU 72.08 contain a 15% limitation.

w. In s. DFI-CU 72.08 what does “a member or associated members” refer to? Does the section’s limitation apply to each member and to each group of associated members; does it apply to all associated members collectively; or does it apply to each member and each associated member? A similar problem appears in s. DFI-CU 72.09 (1). In that section, however, the phrase is changed to “a member and associated members.” The problem also occurs in s. DFI-CU 72.10 (3). There, the problem is exacerbated by the use of different terms. Section DFI-CU 72.10 (3) uses “member and associated members,” but refers to s. DFI-CU 72.08 where the phrase is “member or associated member.” Part of the problem might stem from the way in which “associated member” is defined.

x. In s. DFI-CU 72.09 (1) (a) to (c), since sub. (1) requires a number of loans to be added together, the phrase “any portion” should be clarified. Is it the full amount of the loan if part of the loan is, for example, secured by deposits in a credit union? Or does “portion” refer only to the part of the loan that is secured by deposits in a credit union?

y. In s. DFI-CU 72.09 (2), “. . . by net worth” should be changed to “. . . by the credit union’s net worth.”

z. In s. DFI-CU 72.10 (intro.), “a” should precede “waiver.”

aa. In s. DFI-CU 72.10 (2), “. . . ratios under . . .” should be changed to “. . . ratio requirements under . . . .”

ab. In s. DFI-CU 72.11 (2) (e), it is unclear whether the paragraph requires action to be taken within 45 days or simply requires notice of what action has been taken (even if there is none). Further, it is unclear how subs. (2) (e) and (3) (c) interact?

ac. In s. DFI-CU 72.11, the phrase “. . . respective regional director . . .” appears a number of times. The word “respective” should be changed to “appropriate.” “Respective” is an adjective relating to two or more things or persons regarded individually. This should be done in s. DFI-CU 72.16 (3) as well.

ad. In s. DFI-CU 72.12 (1), the last sentence seems inconsistent with the rest of the subsection. The first three sentences seem to contemplate a loan-by-loan analysis to determine whether a loan is substandard. The last sentence seems to allow an individual loan to be classified as substandard regardless of whether it meets the standards for a substandard loan.

ae. In s. DFI-CU 72.12 (2), “. . . because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of . . .” should be changed to “because certain reasonably specific factors may strengthen and work to the advantage of . . . .”

af. In s. DFI-CU 72.12 (3), “. . . but rather, it is . . .” should be changed to “. . . but rather, that it is . . . .”

ag. In s. DFI-CU 72.16 (1), “exceptions” should replace “exception.”

ah. In s. DFI-CU 72.17, it would be clearer if there were two sentences: “A credit union shall separately identify member business loans in its records. On its financial reports, a credit union shall identify member business loans in the aggregate.”